

CITATION: THE CORPORATION OF THE CITY OF WINDSOR v. PERSONS
UNKNOWN, 2022 ONSC 1168

COURT FILE NO.: CV-22-00030791-0000

DATE: 2022-02-22

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: THE CORPORATION OF THE CITY OF WINDSOR

Applicant

AND:

PERSONS UNKNOWN

Respondents

AND

ATTORNEY GENERAL OF ONTARIO and AUTOMOTIVE PARTS
MANUFACTURERS' ASSOCIATION

Intervening Parties

AND:

THE DEMOCRACY FUND

Intervener as a Friend of the Court

BEFORE: Chief Justice G.B. Morawetz

COUNSEL: *Jennifer King, Michael Finley, Bevin Shores and Annamaria Enenajor*, for the
Applicant, the Corporation of the City of Windsor

Michael A. Wills and Darwin E. Harasym, for the Intervener, the Automotive Parts
Manufacturers' Association

Joshua Hunter and Padraic Ryan, for the Intervener, the Attorney General of
Ontario

Alan Honner, for the Intervener, The Democracy Fund

Antoine d'Ailly and James Kitchen, for Citizens for Freedom

HEARD and DETERMINED: February 18, 2022

REASONS RELEASED: February 22, 2022

ENDORSEMENT

[1] At the conclusion of the hearing on February 18, 2022, the record was endorsed as follows:

[1] The Application brought by the City of Windsor is granted.

[2] Two orders will issue today.

[3] The first is the Order to Consolidate and the second is the Order to continue the injunctive relief granted on February 11, 2022.

[4] The Orders will be signed in the form proposed by the City.

[5] Reasons will follow.

[2] These are the reasons.

Overview

[3] On February 11, 2022, on application by the Plaintiff, the Automotive Parts Manufacturers' Association ("APMA"), and supported by the Interveners, the Corporation of the City of Windsor ("City") and the Attorney General of Ontario ("AG"), I granted an injunction to end the blockade of the Ambassador Bridge ("the Bridge") in the City of Windsor, finding that the test for an interim interlocutory injunction had been met pursuant to s. 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 ("CJA"), r. 40.01 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 and s. 440 of the *Municipal Act, 2001*, S.O. 2001, c. 25 (see *Automotive Parts Manufacturers' Association v. Jim Boak*, 2022 ONSC 1001).

[4] I ordered the injunction to be effective as of February 11, 2022 at 7:00 p.m.

[5] On February 18, 2022, the City sought to continue the injunction, on varied terms, until such time as it is varied or discharged, pursuant to s. 440 of the *Municipal Act, 2001*. At this hearing, the City also sought to continue the injunction as the Applicant, with the APMA and AG as party interveners.

[6] For the following reasons, the requested relief was granted.

[7] In the days since the injunction was granted, the City asserts the following:

(a) protesters defied the court order of February 11, 2022 ("the "February 11 Order"), with numbers increasing and peaking at between 600 and 800 individuals during the evening of Saturday, February 12, 2022;

(b) police arrested 43 individuals on Sunday, February 13, 2022 on charges of mischief exceeding \$5,000 and/or disobeying the February 11 Order contrary to ss. 430(1) and 127 of the *Criminal Code*, R.S.C. 1985, c. C-46;

- (c) protesters continue to violate City by-laws – on Saturday, February 12, 2022, Provincial Offence Officers issued 28 tickets for by-law infractions and at least seven vehicles were towed from the protest area;
- (d) protesters have continued to breach municipal by-laws, including but not limited to:
 - (i) By-law 9148 (traffic by-law),
 - (ii) By-law 233-2001 (vehicle idling by-law),
 - (iii) By-law 25-2010 (protection of highways by-law),
 - (iv) By-law 6716 (noise by-law), and
 - (v) By-law 9023 (parking by-law);
- (e) there is evidence that the protesters plan to continue to protest on roadways approaching the Bridge;
- (f) on Tuesday, February 15, 2022, police successfully intercepted a convoy of several transport trucks from Ottawa, with the suspected intention of heading to Windsor; and
- (g) as a result of the continued threat of a new blockade, police continue to control traffic flow on Huron Church Road to protect access to the Bridge.

Preliminary Issue

[8] The request of the City to be the named applicant was addressed as a preliminary issue. The City takes the position that this procedure will streamline and simplify the proceedings, reduce the burden on the court and the parties and reflect the court's finding that "it will be virtually impossible to recover damages from the protesters."

[9] The City requested that the court exercise its discretion to accept its Notice of Application as the underlying proceeding in this matter, or, in the alternative, consolidate the City's application with the present proceeding.

[10] The request of the City was supported by the APMA and the AG.

[11] The request was opposed by counsel representing The Democracy Fund, and Citizens for Freedom. The arguments in opposition focused on form, not substance. Counsel for The Democracy Fund submitted that the APMA had not taken the formal step of issuing an action. Counsel suggested that the APMA was not honouring its undertaking to commence an action. I reject these suggestions. The record contains a draft Notice of Action and there is no evidence to indicate that APMA is resiling from its undertaking.

[12] The issues before the court are real. The February 11 Order is in effect for 10 days and the motion to continue the injunction must be addressed on a timely basis.

[13] There was no jurisdictional challenge to the court's authority to grant the relief requested by the City.

[14] Rule 1.04 of the *Rules of Civil Procedure* reads as follows:

General Principle

1.04 (1) These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits.

[15] This rule has application in these circumstances. The City is, in effect, switching places with the APMA. In view of the City's request to continue the injunction pursuant to s. 440 of the *Municipal Act, 2001*, it is logical for the City to be the named applicant. In my view, it is appropriate to grant the order reflecting that the City is now the applicant in these proceedings, with the APMA and the AG as party interveners and The Democracy Fund as a friend of the court.

[16] The order giving effect to the foregoing has been signed.

Evidence

[17] The City and the APMA gave notice in accordance with the requirements of the February 11 Order. The City issued a press release on February 12, 2022 containing a URL link to the February 11 Order, as well as the date, time and location of this motion. The City also took steps to give notice by posting a link to the February 11 Order on the front-page banner of the City's website, issuing further press releases and posting large-format copies of the February 11 Order at various locations along Huron Church Road.

[18] Press releases were also circulated by the APMA.

[19] The City contends that on February 11, 2022, Windsor police issued a news update to the protesters to make them aware that anyone blocking the streets at or near the Bridge constituted public mischief and that anyone blocking streets or assisting others in doing so may be committing a criminal offence and be subject to arrest.

[20] Mr. Jason Reynar, Chief Administrative Officer of the City, provided evidence in his affidavit of February 17, 2022 of the steps the City took to publicize the February 11 Order. He made specific reference to press releases, links to the webpage and the signage that was distributed.

[21] Deputy Chief Bellaire stated in his affidavit of February 17, 2022, that he is responsible for implementing the response to any incident involving the Bridge. He also stated that the Critical Incident Commanders have kept him informed about what has been occurring in the area of the Bridge and the police response to any problems or threats to that area.

[22] Deputy Chief Bellaire stated in his affidavit of February 17, 2022 that after the February 11 Order came into effect, officers observed increased demonstrator presence in the Huron Church Road area. He states that he was advised by command personnel that on the evening of February

11, 2022, at the intersection of Huron Church Road and Tecumseh Road West, there were over 200 protesters present; there were 50 to 60 vehicles present; a tent and food tables had been set up; a camper trailer was blocking the northbound lane; children were on the scene who appeared to be under the age of 14 years old; and there was excessive honking.

[23] At the intersection of Huron Church Road and College Avenue, there were over 300 protesters present; there were numerous vehicles north of College Avenue, including tractor-trailers and large trucks, travel trailers and passenger vehicles; there were numerous vehicles south of College Avenue, including tractor-trailers in large trucks; there were children on the scene; there were several tents with food tables; and there were generators, gas cans and barbecues.

[24] Deputy Chief Bellaire stated that on the morning of February 12, Windsor police, supported by their policing partners, moved to direct protesters away the primary entrance to the Bridge at the north end of Huron Church Road. However, rather than dispersing, Deputy Chief Bellaire stated that more individuals were observed to arrive on scene. Police operations were paused and police set up concrete barriers on Huron Church Road.

[25] At 6 a.m. on February 12 at Huron Church Road and Tecumseh Road West, there remained 25-30 support vehicles in nearby parking lots with people sleeping inside and numerous vehicles remaining in the northbound lanes blocking traffic. At the intersection of Huron Church Road and College Avenue, there was a crowd of approximately 75 people; large tents were still present around the roadway and surrounding parking lot; people were sleeping in vehicles on side streets; and vehicles continue to block all Bridge traffic except one emergency lane, with people believed to be sleeping inside some of the vehicles.

[26] By 2 p.m. on Saturday, February 12, 2022, Deputy Chief Bellaire stated that Windsor police observed that at the intersection of Huron Church Road and Tecumseh Road West, there were approximately 600 protesters on scene crowding the scene at the cement barriers and children were observed with their families. At the intersection of Huron Church Road and College Avenue, police were able to control the intersection.

[27] By Saturday evening, February 12, protester numbers increased to between approximately 600 and 800 individuals, with the majority of protesters located at the intersection of Huron Church Road and Tecumseh Road West. Deputy Chief Bellaire stated that vehicles supporting the protest filled parking lots and plazas along Tecumseh Road West and varying numbers of protesters and vehicles were also observed at the intersection of Huron Church Road and College Avenue and at the secondary entrance to the Bridge.

[28] Deputy Chief Bellaire stated that on Sunday, February 13, protesters and vehicles remained in the area and police once again gathered to disperse the protesters blocking the Bridge. Police made over 40 arrests over the course of the day and continued to engage with protesters to clear them from private property in the area.

[29] Early in the morning of Monday, February 14, 2022, Deputy Chief Bellaire stated that police announced the Bridge was open to traffic.

[30] Deputy Chief Bellaire stated that since the beginning of the protest, police have:

- (a) made 44 arrests;
- (b) laid a total of 86 charges, including 43 charges for breach of a court order; and
- (c) seized and towed at least 18 vehicles.

[31] Most of those individuals who were arrested have been released.

[32] Deputy Chief Bellaire added that throughout the operations, the Windsor Police Services' primary goal was to ensure public safety and to bring the protest to a peaceful conclusion.

[33] Deputy Chief Bellaire concluded his affidavit by noting that, based on police monitoring of social media both during and after the protest, there is a risk that the protesters may return. Police are also aware of a poster advertising for protesters to regroup on Saturday, February 19, 2022 in the City. His concerns are detailed at paragraphs 45-53 of his affidavit. Of note, Deputy Chief Bellaire stated that on February 15, 2022, police learned of a convoy of several transport trucks from Ottawa with the suspected intention of heading to Windsor. The convoy was intercepted by police at approximately 8:30 p.m. that day. As a result of these developments and the risk that protesters may return, police have maintained an elevated presence in the area, setting up traffic controls on roads surrounding the Bridge.

[34] Deputy Chief Bellaire stated that as of 6 p.m. on February 17, 2022, police continued to maintain a presence in the area and that various physical and human resources to control traffic were still in place.

[35] Mr. Fabio Costante, City Councillor for Ward 2 of the City, noted that residents and businesses in Ward 2 have been particularly impacted by the disruption caused by the protest, which occurred in the central part of the Ward. The residents have had to endure not only the nuisances and business disruptions caused by the protest, but also traffic and public transit disruptions that have isolated them from the rest of the City.

[36] Affidavits in response were submitted by a lawyer, a paralegal and a legal assistant at the firm representing the Citizens for Freedom.

[37] Mr. Stephen Heimann stated that over the past five years, he has travelled in the area of the Bridge and has experienced traffic delays for a variety of reasons.

[38] In my view, the statements of Mr. Heimann are irrelevant for the purposes of this motion.

[39] Ms. Sherri Peroni attached two photographs to her first affidavit of February 18, 2022 "which purports to show law enforcement enforcing the injunction dated February 11, 2022."

[40] It is not possible to draw any conclusions from these photographs. The context in which they were taken is unknown. Ms. Peroni also references a number of media articles that are not

relevant to the issues before the court. Examples are statements about global chip shortages, supply chain issues and the impact of vaccine mandates on laid-off, unvaccinated workers. This affidavit was not helpful.

[41] A second affidavit from Ms. Peroni provided comment with respect to events which occurred in 2011 and 2012 and their impact on border crossings. These statements are irrelevant to this motion as are references to the border crossing in Coutts, Alberta, the Windsor and Detroit Tunnel and the Blue Water Bridge. The motion before the court relates to the Ambassador Bridge. References to Canadian Border Service Agency Reports that the Bridge is “Temporarily Closed” do not assist the position of the Democracy Fund, as it indicates that traffic at the Bridge is being impeded. References that on February 14, 2022 and February 17, 2022 there was no delay at the Bridge is only indicative that, at that point in time, the traffic at the Bridge was not impeded.

[42] Mr. Nicholas Wansbutter made statements that he has been contacted by several persons described as “protesters” who were now facing criminal charges in relation to the February 11 Order for activities which occurred in Windsor, a number of whom were arrested despite having been physically located on the sidewalk, grass or other locations that are not in the vicinity of the entrance to the Bridge. He also referenced online video evidence of “peaceful individuals protesting in a manner appearing to be consistent with the rights as guaranteed by the *Canadian Charter of Rights and Freedoms*....” He referenced another video showing “a peaceful protester being ambushed from behind by police in a violent arrest.” He also stated that he had been informed that videos exist “on social media which depict abuse of power by the Windsor police and their arrest and treatment of protesters.” Mr. Wansbutter’s affidavit is not helpful. It consists of statements of his opinion, his own interpretation of facts, reference to “charges” with no accompanying statement of what those charges are and references to video evidence that are not of any assistance because they do not provide any context.

[43] In my view, the evidence provided by the parties associated with Citizens for Freedom is of no assistance and carries no weight.

[44] To the extent that there is any conflict in the evidence, I accept the evidence of James Rayner, Fabio Costante, Cheryl McKinnon and Deputy Chief Bellaire.

Analysis

[45] In preparing these reasons, I have reviewed and considered the following cases:

Newcastle Recycling Ltd. v. Clarington (Municipality), [2005] O.J. No. 5344 (C.A.) (“Newcastle”); *Amaranth (Township) v. Ramdas*, 2020 ONSC 2428 (“Amaranth”); *Retirement Homes Regulatory Authority v. In Touch Retirement Living for Vegetarians/Vegans Inc.*, 2019 ONSC 3401 (“Retirement Homes”); *Ontario v. Adamson Barbecue Ltd.*, 2020 ONSC 7679 (“Adamson”); *Canadian National Railway Company v. Doe*, 2020 ONSC 4152 ; *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 (“RJR-MacDonald”); *Hamilton (City) v. Loucks* (2003), 232 D.L.R. (4th) 362 (Ont. S.C.) (“Hamilton”); *Gavin Downing v. Agri-Cultural Renewal Co-operative Inc. O/A*

Glencolton Farms (“ARC”) et al., 2018 ONSC 128 (“*Downing*”); *Ontario (Attorney General) v. Paul Magder Furs Ltd.* (1991), 6 O.R. (3d) 188 (C.A.) (“*Magder*”).

[46] The issues for this Court to decide are:

- (a) Has the City established a strong *prima facie* case that the protesters have breached municipal by-laws and will continue to do so?
- (b) Is a permanent statutory injunction under s. 440 of the *Municipal Act, 2001* the appropriate remedy? Alternatively, should an extension of the February 11 Order be granted under r. 40.02(3) of the *Rules of Civil Procedure* and s. 101 of the *CJA*?

a. Has the City established a strong prima facie case that the protesters have breached municipal by-laws and will continue to do so?

[47] I find that the City has established a strong *prima facie* case, on a balance of probabilities, that the protesters have breached multiple municipal by-laws and that there is a risk they will continue to do so based on the following uncontroverted evidence:

- (i) Between the February 11 Order coming into effect at 7:00 pm on February 11, 2022 and into Sunday, February 13, 2022, the protesters continued to breach multiple municipal by-laws, as is evidenced by multiple tickets issued for by-law infractions including the need to have multiple vehicles towed from the roadways approaching the Bridge. Protesters also breached the February 11 Order, as is evidenced by multiple arrests of individuals for *Criminal Code* charges, including disobeying the February 11 Order. Further, I note that after the February 11 Order came into effect, the number of protesters obstructing the Bridge increased over the course of the evening and into the following evening.
- (ii) There is evidence of the protesters’ expressed intent to continue their blockade despite the February 11 Order.
- (iii) There is evidence that the protesters plan to continue to protest on roadways approaching the Bridge. This includes the successful interception of a convoy of several transport trucks from Ottawa with the suspected intention of heading to Windsor, as well as police monitoring of social media which identifies calls for protesters to regroup, including messages of “it’s not over,” “we are not done” and “Civil war time.”
- (iv) As a result of the continued threat of a new blockade, police continue to control traffic flow onto Huron Church Road to protect access to the Bridge. In other words, traffic in the area is not flowing normally due to the threat of further blockades.

[48] The evidence clearly establishes that even after being informed of the terms of the February 11 Order, the protesters chose to ignore it and continue to impede and obstruct access to the Bridge.

[49] I find that the City has established a strong *prima facie* case, on a balance of probabilities, that there has been a deliberate and continuing breach of municipal by-laws and the February 11

Order. I also find that there is a risk that protesters will reassert a presence on the roadways, thereby impeding or blocking access to the Bridge.

b. Is a permanent injunction the appropriate remedy?

[50] Having found that the City has established a strong *prima facie* case that protesters breached municipal by-laws and the February 11 Order, and that there is a risk they will continue to do so, the next issue is whether permanent injunctive relief is the appropriate remedy.

[51] The City is seeking a permanent injunction pursuant to s. 440 of the *Municipal Act, 2001*, to enjoin the protesters from continuing to violate the City's by-laws. Section 440, under the section "General Enforcement Powers," provides the City with the authority to seek an injunction to restrain a person (or persons) from contravening its by-laws. In particular, it provides as follows:

Power to restrain

440 If any by-law of a municipality or by-law of a local board of a municipality under this or any other Act is contravened, in addition to any other remedy and to any penalty imposed by the by-law, the contravention may be restrained by application at the instance of a taxpayer or the municipality or local board.

[52] As I discussed in my Reasons of February 14, 2022, the granting of a statutory injunction involves a different analysis than the granting of an equitable injunction under the common law. The three-part test for an interim injunction set out in *RJR-MacDonald Inc.* at paras. 77-80 does not strictly apply in applications for a statutory injunction pursuant to s. 440 of the *Municipal Act, 2001*. The test for injunctive relief to restrain breaches of by-laws is narrower. In such cases, the moving party will not ordinarily have to establish inadequacy of damages or irreparable harm and that the balance of convenience favours the granting of the injunctive relief because the public authority is presumed to be acting in the best interests of the public and a breach of the law is considered to be irreparable harm to the public interest: see *Newcastle*, at para. 32; *Amaranth*, at para. 54; and *Adamson*, at para. 17.

[53] Accordingly, on an application for a statutory injunction, the applicant need only demonstrate that there is a serious issue to be tried and this must be demonstrated by establishing a strong *prima facie* case on a balance of probabilities: *Newcastle*, at para. 32; *Hamilton*, at para. 37; *Amaranth*, at paras. 51-55; and, *Adamson*, at para. 16.

[54] Based on a review of the authorities cited by the City, the following general principles apply when an injunction is authorized by statute:

- (i) The applicant need only to establish a strong *prima facie* case, on a balance of probabilities, that there is a breach of the applicable statute. There is no obligation on

the municipality to provide “compelling evidence” that an injunction is warranted: see *Newcastle*, at para. 32.

- (ii) Proof of actual damages suffered or proof of harm to the public is not an element of the legal test.
- (iii) There is no need for other enforcement remedies to have been pursued.
- (iv) The factors considered by a court when considering equitable relief will have a more limited application. For example, hardship from the imposition and enforcement of an injunction will generally not outweigh the public interest in having the law obeyed.
- (v) There is a strong public interest in ensuring that all citizens in our society obey the law. Therefore, there is a presumption that the courts will grant interlocutory injunctions to compel compliance with the law as opposed to denying the injunction so that a defendant may continue to break the law. Any court tolerance of a continuing breach of the law will be extremely rare.

[55] The Court does maintain a residual discretion as to whether to grant the injunction even if there is a clear breach of the statute. However, the Court’s residual discretion is limited. Where a municipal authority seeks an injunction to enforce a by-law that it establishes is being breached, any discretion the court may have to permit unlawful conduct is narrow and arises only in circumstances that are truly exceptional: see *Newcastle*, at para. 32; and *Amaranth*, at para. 55.

[56] The onus to raise the exceptional circumstances lies with the respondent, and those circumstances are limited: *Retirement Homes*, at para. 48. These “exceptional circumstances” could include: the offending party has ceased the activity; the injunction is moot and would serve no purpose; the offending party has provided clear and unequivocal evidence that the unlawful conduct will cease; there is a right that pre-existed the enactment that was breached; there is uncertainty that the offending party is flouting the law or where the conduct is not what the enactment was intended to prevent: *Downing*, at para. 113.

[57] None of the exceptional circumstances were credibly advanced by the Interveners, The Democracy Fund or Citizens for Freedom. I also parenthetically note that none of the Defendants who were provided notice of this motion chose to participate.

[58] In his submissions, Mr. d’Ailly conceded that the protesters continued to commit breaches of municipal by-laws even after the February 11 Order came into effect on February 11, 2022 at 7:00 pm. He submits that protesters committed unlawful acts only because the police chose to use their discretion to not immediately arrest any of the protesters. I do not accept the submissions of Mr. d’Ailly or of Mr. Kitchen that this injunction should not be granted because the February 11 Order gave police officers discretion as to how and when the February 11 Order would be enforced by the arrest or removal of the protesters breaching the law.

[59] Court orders are not recommendations or suggestions to be followed at the discretion of those to whom it applies. The rule of law requires that everyone obey the law. Significant,

organized, deliberate and persistent defiance of the law and court orders is a serious threat to the rule of law which is one of the foundations of a functioning democracy. The protesters are obliged, as is every Canadian citizen, to follow the law and not breach municipal by-laws or court orders that prohibit unlawful conduct regardless of whether or not police choose to enforce the law by arresting them.

[60] I also do not accept their submissions, or the submissions of Mr. Honner, that there are other enforcement remedies available to address unlawful conduct committed by the protesters, such as the *Emergencies Act*, R.S.C. 1985, c. 22 (4th Supp.) and/or the *Criminal Code*, and therefore an injunction is not warranted. As set out earlier, the test for a statutory injunction does not require consideration of the availability of other enforcement remedies.

[61] Finally, Mr. Kitchen again raises the issue of the protesters' rights under ss. 2(b) and (c) the *Canadian Charter of Rights and Freedoms*. I re-iterate from my Reasons of February 14, 2022, that absent a constitutional challenge to the by-laws in question, they are presumptively valid and remain in force and in effect. A consideration of the protesters' *Charter* rights is therefore not required.

[62] No constitutional challenge has been advanced by anyone on this motion - either to the municipal by-laws in question or to the February 11 Order. As I stated in my Reasons of February 14, 2022, neither the municipal by-laws nor the injunction granted on February 11, 2022 prevent the protesters from lawfully expressing their message and exercising their ss. 2(b) and (c) *Charter* rights. However, the *Charter* does not protect expressive conduct by unlawful means, which includes breaching presumptively valid laws or court orders. One of the court's most important rules is that if it makes an order, unless and until that order is either stayed or reversed, or an exception to the order is specifically granted, the order must be respected and obeyed.

[63] In *Magder*, the appellant took the position that he could continue to defy the law and court orders prohibiting him from opening his retail establishment on Sundays and holidays because, in his opinion, the Act in question infringed his *Charter* rights. In making the trite point of law that one cannot ignore the law or a court order simply because one held the opinion that it was ineffective on constitutional grounds, or on any other grounds, the court said the following at para. 12:

... But the Charter is no licence to break the law or defy an order of the court. It is elementary that so long as a law or an order of the court remains in force it must be obeyed. In *Canada (Human Rights Commission) v. Taylor*, [1990] 3 S.C.R. 892, 75 D.L.R. (4th) 577, while the majority found it unnecessary to deal with the issue, McLachlin J. said at p. 974 S.C.R., p. 635 D.L.R.:

In my opinion, the 1979 order of the Tribunal, entered in the judgment and order book of the Federal Court in this case, continues to stand unaffected by the Charter violation until set aside. This result is as it should be. If people are free to ignore court orders because they believe that their foundation is unconstitutional,

anarchy cannot be far behind. The citizens' safeguard is in seeking to have illegal orders set aside through the legal process, not in disobeying them.

[64] The same principle applies in this case. It is no answer to the issue on this motion that the continuation of the injunction sought is not warranted because protesters have the right to freedom of expression and freedom of assembly. The protesters must comply with the law and the issue on this motion is whether the City has established that an injunction is warranted because the protesters have breached the law and will likely continue to do so.

[65] The record before the court amply demonstrates not only that the protesters have committed “clear breaches” of the municipal by-laws and the February 11 Order, 2022 but that there remains a risk that they will continue to do so.

[66] I find that the City has met the test for a permanent injunction pursuant to s. 440 of the *Municipal Act, 2001* and that there have been no credible exceptional circumstances advanced to warrant exercising my discretion to refuse to grant the injunction sought by the City. Indeed, it is in the public interest that a permanent injunction be granted particularly where there has been a persistent and deliberate flouting of the law.

[67] Given my conclusion that a permanent injunctive order is warranted under the provisions of s. 440 of the *Municipal Act, 2001*, I need not determine if a similar order is justified under s. 101 of the *CJA*. I make no finding on whether such an order can or should be granted under the *CJA*.

[68] Finally, I repeat what I stated in the February 14, 2022 Reasons, namely: “Simply put, freedom of expression does not extend to the point that the protesters’ activities can result in the denial of fundamental rights and freedoms to all those detrimentally affected by the blockade.”

[69] This type of activity must cease. Based on my assessment of the evidence, a time-limited injunction would not provide the City and its residents with the required degree of certainty that by-law breaches will cease. The City and its residents are entitled to have this certainty. In my view, a time-limited injunction, as suggested by counsel to The Democracy Fund and Citizens for Freedom, would not provide the necessary assurances to the City and its residents.

Conclusion

[70] In the result, the February 11 Order is extended under s. 440 of the *Municipal Act, 2001* on the terms set out in the draft order submitted by counsel to the City. The Order has been signed in this form.

Chief Justice G.B. Morawetz

Date: February 22, 2022